

REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-3, and 9-11 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. This rejection is respectfully traversed.

Claim 1 has been amended to refer to "a station side" to remove the antecedent basis concern raised by the Examiner. Claim 1 has also been amended to adopt the qualifiers first high speed and second high speed modems per the Examiner's suggestion. Neither amendment is a narrowing amendment or surrenders subject matter from the originally-filed claims. Withdrawal of the rejection under 35 U.S.C. §112, second paragraph is respectfully requested.

The abstract has been amended to overcome the objection raised by the Examiner. Editorial type amendments have also been made to the specification. Withdrawal of the objection to the specification is respectfully requested.

Claims 1-3, and 7-11 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,385,203 to McHale et al. This rejection is respectfully traversed.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB*

v. Crucible, Inc., 793 F.2d 1565 (Fed. Cir. 1986). McHale fails to satisfy this rigorous standard.

Although McHale discloses a second high speed modem 74 in the communication server 58 of station 14 which includes a switch 70, there is no teaching in McHale of the first high speed modem 30 associated with the user terminal 12 having its own switching functionality. The Examiner refers to the switch 70. But by the Examiner's own admission, switch 70 is associated with the *second* high speed modems at the station side 14. So switch 70 can not reasonably be viewed as being provided with the first high speed modem 30 at the subscriber station 12 which is physically remote from the station 14.

McHale also never addresses the problem to which the independent claims of the instant application are directed: reducing the inconvenience experienced by subscribers during a data transmission failure. If the broadband connection between the XDSL modem 30 and 74 fail, there is no teaching in McHale of transforming the high speed broadband connection into a lower speed narrowband connection during such a failure to at least provide the user with some data communication capability.

New claims 12-22 are also not taught by McHale. For example, McHale fails to disclose that the subscriber 12 includes, in addition to the high speed modem 30, "a second, lower speed, narrowband modem" along with "first switching circuitry selectively controllable to direct signals to and from the user terminal via the communications network using the first modem or the second modem." Nor is it clear in

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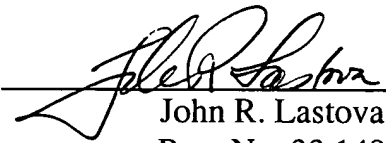
McHale that the switch 70, which is "different from the first switching circuitry," is "selectively controllable to support a connection with the user terminal via the communications network using one of the broadband modems or one of the narrowband modems. McHale's controller 80 does not control both the claimed first and second switching circuitry. Similar distinguishing features are found in independent method claim 18. The features of newly added dependent claims 13-17 and 19-21 are also not disclosed or suggested by the McHale.

The application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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